QORTI TAL-APPELL

IMĦALLFIN

S.T.O. PRIM IMĦALLEF MARK CHETCUTI
ONOR. IMĦALLEF GIANNINO CARUANA DEMAJO
ONOR. IMĦALLEF ANTHONY ELLUL

Seduta ta' nhar il-Ħamis, 16 ta' Diċembru, 2021.

Numru 3

Appell numru 268/2021/1

***Pharmadox Healthcare Limited* (C-39266)**

***v*.**

Central Procurement and Supplies Unit* fil-Ministeru tas-Saħħa; u d-Direttur tal-Kuntratti għad-Dipartiment tal-Kuntratti; u b'dikriet tal-20 ta' Settembru 2020 issejħu fil-kawża *Medical Logistics Limited*, *Inspectra Limited* u *Consolidated Packaging Limited

1. Dan huwa appell ta' *Pharmadox Healthcare Limited* ["*Pharmadox*" jew "l-appellanti"] minn deċiżjoni tat-3 ta' Awissu 2021 tal-Bord ta' Reviżjoni dwar Kuntratti Pubbliċi ["il-Bord ta' Reviżjoni"], imwaqqaf taħt ir-Regolamenti dwar l-Akkwist Pubbiku ["L.S. 601.03" jew "ir-Regolamenti"], li ċaħad oġġezzjoni magħmula mill-appellanti kontra deċiżjoni tas-*Central Procurement and Supplies Unit* ["*CPSU*" jew "l-awtorità kontraenti"] illi

twarrab offerta tagħha għal "*over-labelling services of medicinal products*" għax tqieset "*not technically compliant*".

2. Il-fatti relevanti seħħew hekk: kienet saret sejħa mill-awtorità kontraenti għal "*request for participation (negotiated) for over-labelling services of medicinal products*". L-appellanti u oħrajn għamlu offerti iżda b'ittra tas-7 ta' Mejju 2021 l-awtorità kontraenti għarrfet lill-appellanti illi:

> »… … … the procurement proposal submitted by your company was not technically compliant.
>
> »The main reasons why your procurement proposal was non-compliant are as follows:
>
> »Reasons –
>
> »for requirements 1, 1.1a[1] – recommended bidder proposed shorter lead times;
>
> »for requirements 2, 2.1a, 3, 3.1a – no translation is offered (not compliant);
>
> »for requirements 1.1b, 2.1b and 3.1b – no offer was submitted.
>
> »The evaluation committee recommended that this RfP process will continue with further negotiations with the sole compliant interest submitted by *Messrs Medical Logistics Ltd* for requirements 1, 1.1a, 2, 2.1a, 3 and 3.1a and *Inspectra Ltd* for requirements 1.1b, 2.1b and 3.1b.«

3. L-appellanti b'ittra tal-14 ta' Mejju 2021 ressqet oġġezzjoni quddiem il-Bord ta' Reviżjoni u talbet illi l-bord isib illi:

> »… … … the awarded tender to Messers *Medical Logistics Ltd* and *Inspectra Limited* respectively was not compliant … … … and appellant should not have been disqualified, and was fully compliant to be awarded the said rfp.«

4. Bid-deċiżjoni tat-3 ta' Awissu 2021 li minnha sar dan l-appell il-Bord ta' Reviżjoni iddeċieda hekk:

> »The board … … …
>
> »a) does not uphold appellant's letter of objection and contentions,

[1] Il-kontenut ta' dawn il-partiti huwa muri fl-iSkeda A mehmuża ma' din is-sentenza.

»b) upholds the contracting authority's decision in the recommendation for the award of the tender,

»c) directs that the deposit paid by appellant not be reimbursed.«

5. Ir-raġunijiet li wasslu lill-bord għal din id-deċiżjoni ġew imfissra hekk:

»This board, … … … having noted the objection filed by *Pharmadox Healthcare Ltd* (hereinafter referred to as the Appellant) on 17th May 2021, refers to the claims made by the same Appellant with regards to the tender … … … whereby, the Appellant contends that:

»a) Licences

»*Inspectra Limited* not only do not have the certification, authorisation and the required licences by the Medicines Authority to effect serialization but rather altogether are restricted and precluded from handling pharmaceutical products falling under the scope of the FMD directive[2] where serialisation is applicable.

»b. Points 1 & 1.1a

»i. With respect to quoting lead time as 1 to 7 working days over the different ranges in terms of quantity of the respective batch undergoing secondary packaging and is therefore the minimum one can be expected to be allowed to present requested details in the bid. Lesser than 1 day is close to the impossible. Hence declaring the appellant as non compliant on shorter lead time is unacceptable.

»ii. Over the last few years to date CPSU has been engaging *Pharmadox* for the same activity across numerous products with wide ranging batch sizes and have been commended for the expedited turnaround time and quality of service on numerous occasions by multiple individuals within CPSU.

»c. Points 2, 2.1a. 3 & 3.1a

»With regards to this disqualification the Appellant submits that the adjudicators should have been aware that translations are quoted per words and vary as to language and amount of literature involved. To this effect Doc E has been presented that is a separate tender document that specifically refers to translation services in the pharmaceutical industry. It's a complex and particular assignment depending on the amount of literature and the language. Translations are quoted on amount of words and the language; hence the applicant in the present tender / RfP could not have quoted any translation without knowing the amount of literature involved. As can be attested translation quotes form a separate tender assignment and this is certainly known or should have been known to CPSU.

»d. Points 1.1b, 2.1b &3.1b

»Page 11 of the tender document clearly states "No bids will be rejected for incompletely filled FBF[3] in this case as long as the

2 *Falsified Medicines Directive*

3 *Financial bid form.*

filled-in sub-types are clearly indicated also in the provided technical offer". Therefore the CPSU was irregular when it disqualified appellant for not submitting quote for serialization and this should not have been a disqualification factor.

»This board also noted the Contracting Authority's reasoned letter of reply filed on 25th May 2021 and its verbal submission during the virtual hearing held on 27th July 2021, in that:

»a) Licences

»With regards to the primary contention raised by Appellant in that they claim that *Inspectra Ltd* are not in possession of the required licences as issued by the Medicines Authority, it is to be noted that the requirement to submit any certification relevant to licences as issued by the Medicines Authority is not found. Therefore, since the tender dossier did not include this requirement at this stage, then the preferred bidder could not have been rejected on this ground.

»b) Points 1 & 1.1a

»i. CPSU submits that the reasons why their offer for sub-types 1 and 1.1a was not accepted is due to the fact that the recommended bidder proposed shorter lead times.

»ii. The sole award criterion clearly stated "the contract for each respective works order sheet will be awarded to the economic operator submitting the cheapest offer; provided that the offer reflects the minimum timelines, which ensure least delay in making the medicinal product available to users within the Government Healthcare Service. In this regard, due consideration will also be given to those applicants who offer tangible advantages in terms of shorter timeframes and overall reduction of logistical delays.

»iii. The RfP clearly outlined that the cheapest technically compliant offer will be chosen, provided that the offer reflects the minimum timelines. The fact that CPSU has been engaging *Pharmadox* for the same activity across numerous products for which *Pharmadox* have been commended is irrelevant.

»c) Points 2, 2.1a, 3 & 3.1a

»i. CPSU contend that the contract presented by the objectors and attached as Doc. E cannot be submitted in order to justify the non-compliance of their offer for the said types as the contract in question refers to a different tender, which contract was not requested in the requirements in the RfP.

»ii. The reason why the objectors were rejected for these lots was due to the fact that, as is evidently clear in the technical offer form, although indicated on page 1 of the technical offer, the objectors clearly stated "no translation" for all sub-types 2, 2.1a, 3 and 3.1a.

»iii. It is unacceptable that the objectors claim not to have submitted because they had no indication of the quantities of translation needed or on the number of words to be

translated, as the objectors had every opportunity to clarify further whether they needed to submit an offer.

»iv. It is unacceptable for the objectors to claim that the RfP has been wrongly drafted and published, as, if the objectors felt that the RfP was ambiguous or that there were wrong / contradictory clauses in the RfP, they ought to have exhausted their remedies as per the Public Procurement Regulations and submitted a reasoned application before the closing date of a call for competition as per regulation 262 in order to challenge the RfP.

»d) Points 1.1b, 2.1b &3.1b

»i. Objectors were not considered any further for the sole reason that they did not submit any offers with regard to the sub-types. Objectors have wrongly interpreted the clause of page 11 “No bids will be rejected for incompletely filled FBF in this case as long as the filled-in sub-types are clearly indicated also in the provided technical offer”. The objectors did not complete the technical offer form with regard to these sub-types.

»This board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will consider Appellant’s grievances, as follows.

»a. Licences

»Reference is made to “Section 1 – Instruction to Tenderers”. No reference is made to the requirement to submit any certification relevant to licences as issued by the Medicines Authority. Since this is not a specific requirement at this stage, within the tender dossier, then the preferred bidder (*Inspectra Ltd*) could not have been treated as non-compliant on this ground.

»This board does not uphold this grievance of the Appellant.

»b. Points 1 & 1.1a

»i. This board refers to “Section 3 – Technical Specifications – Scope of Service of the Tender Dossier”, whereby it is stated “For each of the works order sub-type quoted, the applicant should specify the maximum timeframe required to supply each individual service from the date of request”. Hence if the Appellant provided one (1) range being one to seven days, the evaluation committee was right in its assessment to evaluate on the seven days submission. This was confirmed as stated under oath by Dr Richard Despott, since the preferred bidders indicated a shorter time lead.

»ii. This board humbly points out that, with respect to the Appellant being “commended for the expedited turnaround time and quality of service on numerous occasions by multiple individuals within CPSU”, deems this to be irrelevant to the procedures of this particular and specific case.

»This board does not uphold this grievance of the Appellant.

»c. Points 2, 2.1a, 3 & 3.1a

» With respect to these 4 sub-sections, this board notes the following:

»i. Doc. E as submitted by the Appellant is deemed to be inadmissible and irrelevant since it refers to a different tender with different specifications and requirements.

»ii. The Appellant's technical offer submission for these sub-sections, which is a Note 3 document, was “no translation”, which left little room for the evaluation committee to manoeuvre. The evaluation committee adhered to the policy of self limitation and did not seek a rectification to this offer.

»iii. The Appellant could have made use of a request for clarification if it felt the need for further information when formulating their proposal. If, on the other hand, their assessment was that the request from the contracting authority was ambiguous and that the tender dossier was incorrectly drafted as “the adjudicators should have been aware that translations are quoted per words and vary as to language and amount of literature involved” and “translations are quoted on amount of words and the language; hence the applicant in the present tender / RfP could not have quoted any translation without knowing the amount of literature involved. As can be attested translation quotes form a separate tender assignment and this is cerlainly known or should have been known to CPSU”, they could have made use of the remedy as stipulated under regulation 262 in order to challenge the RfP before the closing date of the call for tender. Regulation 262(*d*) of SL 601.03 is specific when it states “to correct error or to remove ambiguities of a particular term or clause included in a call for competition, in the contract documents, in clarification notes or in any other document relating to the contract award procedure”.

»This board does not uphold this grievance of the Appellant.

»d. Points 1.1b, 2.1b & 3.1b

»As already pointed out by this board in point (c)(ii) above, the evaluation committee is precluded to ask for rectification of Note 3 documents. In this specific case, for these sub-sections, the technical offer was left completely empty. The concept of self limitation was adhered to by the evaluation committee.

»This board does not uphold this grievance of the Appellant.«

6. *Pharmadox* ressqet appell minn din id-deċiżjoni tal-Bord ta’ Reviżjoni b’rikors tal-20 ta’ Awissu 2021. Għal dan ir-rikors l-awtorità kontraenti wieġbet fit-3 ta’ Settembru 2021 u d-Direttur tal-Kuntratti wieġeb fis-6 ta’ Settembru 2021.

7. B'dikriet tal-20 ta' Settembru 2021 issejħu f'dawn il-proċeduri l-partijiet l-oħra li kienu parti fil-proċeduri quddiem il-Bord ta' Reviżjoni, *viz. Medical Logistics Limited* ["*MLL*"] (illum *Mint Health Limited*), *Inspectra Limited* ["*Inspectra*"] u *Consolidated Packaging Limited* ["*CPL*"]. *CPL* wieġbet fit-13 ta' Ottubru 2021 u *Mint* fil-5 ta' Novembru 2021.

8. Qabel ma nqisu l-aggravji tal-appell ta' *Pharmadox* nibdew bl-eċċezzjoni tad-Direttur tal-Kuntratti ["id-Direttur"] li jrid li jinħeles mill-ħarsien tal-ġudizzju għax ma għandux leġittimità passiva biex ikun parti.

9. Din l-eċċezzjoni hija ġustifikata. Is-sejħa li dwarha saru dawn il-proċeduri ma hijiex waħda li tmexxiet mid-Direttur. Għal din ir-raġuni d-Direttur ma kienx parti fil-proċeduri quddiem il-Bord ta' Reviżjoni u għalhekk, taħt ir-reġ. 285, l-appell ma kellux jiġi indirizzat kontra d-Direttur.

10. Il-qorti għalhekk teħles lid-Direttur mill-ħarsien tal-ġudizzju.

11. Ngħaddu issa għall-aggravji tal-appell.

12. Fl-ewwel aggravju *Pharmadox* tgħid hekk:

> »Primarjament il-Bord ta' Reviżjoni dwar il-Kuntratti Pubbliċi naqas illi bħala *punto di partenza* jikkunsidra jekk il-kumitat tal-evalwazzjoni tas-*CPSU* kienx korrett jew skorrett li jiddikjara l-offerta tas-soċjetà appellanti bħala *non technically compliant* u konsegwentement ġiet skwalifikata. Dan kellu jkun punt ferm kruċjali għaliex is-soċjetà appellanti ppreżentat termini (*1 - 7 days lead times*). Minn eżami tad-dokument fejn is-soċjetà appellanti ġiet iddikjarata *non compliant* jirriżulta espressament illi l-iskwalifika saret "*recommended bidder proposed shorter lead times*". Isegwi li *se mai* mhux għaliex kienet *not technically compliant* iżda għaliex il-*preferred bidder* kellha termini oqsor.
>
> »Qam il-punt sostantiv dwar il-fatt illi l-appellanti naqsu u saħansitra rrifjutaw illi jippublikaw kemm kull offerent ippreżenta offerti. Dan biss kien jevita l-ħtieġa għall-appell fil-każ illi jkun magħruf kemm kienet l-offerta tal-offerent magħżul. Dan ma sarx u anzi ġie oppost mill-appellati fejn il-proċedura kollha baqgħet okkulta u msejsa b'suspett fondat li l-Bord ta' Reviżjoni dwar il-Kuntratti u l-kumitat tal-evalwazz-

> joni ma applikawx il-prinċipji tat-trattament ugwali u trasparenza li flimkien mal-prinċipju tas-*self limitation* huma prinċipji obbligatorji li l-imsemmija entitajiet issa appellati huma marbuta bihom.
>
> »Din l-onorabbli qorti ċertament sejra tikkonferma illi l-fatt innifsu li ma ġiex osservat il-prinċipju ta' trasparenza fejn l-appellati sa anke minn qabel ma skada l-perijodu tad-dritt ta' oġġezzjoni quddiem il-Bord ta' Reviżjoni ċaħad u rrifjuta talba anke mingħand *third party bidders* sabiex jingħataw informazzjoni dwar l-offerta, jikkonsisti f'aggravju, meta l-offerta in kwistjoni kienet waħda prinċipalment dwar prezz (*cheapest offer*) u li l-offerta ssir fl-iqsar żmien . Kwindi huwa aggravju manifest li l-appellati baqgħu jirrifjutaw li jinfurmaw l-offerenti l-oħra, issa appellanti, dwar il-prezz u dwar it-terminu tal-*preferred bidder*. *Non dislosure* f'kuntratt pubbliku ċertament ma huwiex aċċettabbli u jiskwalifika kull offerta u proċess regolari.
>
> »Ma seta' qatt ikun li l-appellanti tiġi ddikjarata *non compliant* u skwalifikata meta r-raġuni għal tali skwalifika kienet proprju "*recommended bidder proposed better lead times*.«

13. Dan l-aggravju hu msejjes fuq żewġ argumenti li, għalkemm għandhom rabta ma' xulxin, huma madankollu distinti: i. illi l-fatt li ħaddieħor offra kondizzjonijiet aħjar dwar iż-żmien tal-konsenja (*lead times*) kellu *se mai* iwassal mhux għall-iskwalifika tal-appellanti iżda li tintgħażel il-proposta ta' ħaddieħor; u ii. illi ma ngħatax tagħrif dwar l-offerti tal-oblaturi l-oħra.

14. Tassew illi tgħid sew l-appellanti illi l-fatt li proposta ta' ħaddieħor hija aħjar ma jwassalx għall-iskwalifika iżda li tintgħażel il-proposta ta' ħaddieħor illi hija aħjar minn tagħha. Għalkemm fl-ittra tal-awtorità kontraenti tas-7 ta' Mejju 2021 jissemmew tliet raġunijiet għala l-proposta tal-appellanti tqieset *not technically compliant*, fil-fatt parti biss tal-proposta kienet hekk, *viz.* dik għal dawk il-partiti li riedu *translation services* bħala parti mis-servizz, u l-appellanti ma offrietx ukoll dik il-parti tas-servizz u għalhekk l-offerta kienet nieqsa. Iż-żewġ raġunijiet l-oħra, *viz.* li ħaddieħor offra *lead times* aħjar u li l-appellanti ma għamlitx offerta għal *serialisation*, ma jwasslux għal skwalifika: fl-ewwel każ iwasslu li l-proposta ta' ħaddieħor titqies aħjar, għalkemm dik tal-appellanti tkun

valida wkoll, u fit-tieni każ il-proposta ma titqiesx għax ma saritx. Il-fatt li ma saritx proposta għal partita partikolari ma jfissirx li l-proposta kollha taqa' għax fit-*technical specifications* jingħad illi "*Bidders can submit their proposals / offers for any combination of scenarios or all of the requested services. Each of the requirements … … … will form a separate lot and will be awarded to the cheapest technically compliant bidder*". Taħt il-*criteria for award* jingħad ukoll illi "*preference will be given to the bidder offering the complete portfolio of nine sub-titles / works*". Dan ifisser li, għalkemm tingħata preferenza lil min jagħmel offerta għall-partiti kollha, min jagħmel offerta għal xi wħud biss minnhom ma jiġix skwalifikat għalhekk biss, għalkemm ma jitqiesx favorevolment daqs min jagħmel offerta għall-partiti kollha. Kien leċitu għalhekk li ssir proposta għal uħud biss mill-partiti, bla ma dan iwassal biex din il-proposta titqies *not technically compliant*.

15. L-ewwel parti tal-ilment f'dan l-ewwel aggravju mela hu illi l-fatt li proposta ta' ħaddieħor hija aħjar minn dik tal-appellanti ma jwassalx għall-iskwalifika imma biss, *se mai*, iwassal biex tintgħażel il-proposta ta' ħaddieħor illi hija aħjar minn tagħha, u l-appellanti għandha raġun f'dan l-argument. Dan iżda ma jkollux konsegwenzi pratiċi jekk l-offerta ta' ħaddieħor hija tassew aħjar, għax dan ikun ifisser illi f'kull każ, ukoll jekk valida, il-proposta tal-appellanti ma tistax tintlaqa'. Hawn tidher ir-relevanza tat-tieni argument tal-appellanti, għax, jekk ma huwiex magħruf x'kienu l-offerti li ntgħażlu, ma jistax ikun magħruf jekk dawn l-offerti kinux tassew aħjar.

16. It-tagħrif li għandu jingħata lill-oblatur li l-offerta jew proposta tiegħu ma tintlaqax huwa regolat bir-reg. 242 tal-L.S. 601.03:

> »**242.** (1) L-awtorità responsabbli ghat-tmexxija tas-sejħa għandha tgħarraf lil kull kandidat u offerent bid-deċiżjonijiet li ħadet rigward il-konklużjoni ta' ftehim qafas, l-għoti ta' kuntratt jew ammissjoni għal sistema dinamika ta' xiri, inklużi r-raġunijiet għal kull deċiżjoni li ma jiġix konkluż ftehim qafas, li ma jingħatax kuntratt li għalih saret sejħa għall-kompetizzjoni, li terġa' tinfetaħ il-proċedura jew li ma tiġix implimentata sistema dinamika ta' xiri.
>
> **»**(2) Fuq talba mill-kandidat jew offerent ikkonċernat, malajr kemm jista' jkun, u f'kull eventwalità fi żmien ħmistax-il jum mir-riċevuta ta' talba bil-miktub, l-awtorità responsabbli ghat-tmexxija tas-sejha għandha tinforma:
>
> »… … …
>
> »(*ċ*) lil kull offerent li għamel offerta ammissibbli bil-karatteristiċi u l-vantaġġi relattivi tal-offerta magħżula kif ukoll l-istess tal-offerenti jew il-partijiet għall-ftehim qafas li ntagħżlu;«

17. L-appellanti ngħatat ir-raġunijiet għala l-proposta tagħha ma ntlaqgħetx, *viz.* li dwar xi partiti kien hemm min għamel offerta aħjar, dwar partiti oħra l-offerta kienet nieqsa u dwar partiti oħra offerta ma saritx. Li ma ngħatatx hu t-tagħrif dwar "il-vantaġġi relattivi tal-offerta magħżula".

18. Dan it-tagħrif ma huwiex meħtieġ li jingħata fl-avviż li bih l-oblatur ikun mgħarraf li l-proposta tiegħu ma ntlaqgħetx; huwa meħtieġ li jingħata biss lil oblatur li jkun għamel offerta ammissibli jekk ikun intalab dak it-tagħrif, ukoll jekk it-talba tkun saret minn oblatur ieħor. L-appellanti għamlet offerta ammissibbli u, għalkemm ma għamlitx it-talba li setgħet tagħmel taħt ir-reg. 242(2)(*ċ*), ladarba t-talba saret minn oblatur ieħor it-tagħrif kellu jingħata "lil kull offerent li għamel offerta ammissibbli". Għalhekk in-nuqqas li jingħata t-tagħrif lil *Pharmadox* jagħtiha raġun ukoll fit-tieni parti tal-aggravju għax dak it-tagħrif ma ngħatalhiex tempestivament. Li tkun mgħarrfa biss illi l-proposta ta' ħaddieħor kienet aħjar ma huwiex

biżżejjed, għax kellha tingħata wkoll tagħrif dwar "il-vantaġġi relattivi tal-offerta magħżula", biex tkun tista' tara u tifhem għala l-offerta ta' ħadd-ieħor tqieset aħjar u tressaq quddiem il-Bord ta' Reviżjoni r-raġunijiet tagħha kontra jekk ma taqbilx.

19. L-awtorità kontraenti tgħid illi dak it-tagħrif hu "kunfidenzjali" u jekk jinkixef ikun "detrimentali għall-kompetizzjoni". Fil-fatt iżda l-kundizzjonijiet tal-proposti magħżula llum jinsabu fl-atti tal-kawża u għalhekk ma jidhirx wisq konvinċenti l-argument li huma kunfidenzjali. F'kull każ, il-liġi trid illi min jagħmel offerta ammissibbli, bħal ma għamlet l-appellanti, għandu jingħata tagħrif dwar "il-vantaġġi relattivi tal-offerta magħżula" meta mqabbla ma' tiegħu, jekk jintalab dak it-tagħrif, kif intalab fi żmien utli minn oblatur ieħor.

20. Tassew illi issa dak it-tagħrif huwa disponibbli għax huwa fl-atti, iżda jibqa' l-fatt li ma kienx disponibbli fi żmien utli li fih l-appellanti setgħet titlob rimedju quddiem il-Bord ta' Reviżjoni, u b'hekk ġiet imċaħħda minn rimedju effettiv.

21. Għal dawn ir-raġunijiet il-qorti hija tal-fehma illi l-ittra tas-7 ta' Mejju 2021 li biha l-awtorità kontraenti għarrfet lill-appellanti illi l-proposta tagħha ma ntlaqgħetx ma kinitx biżżejjed biex l-appellanti tkun tista' tinqeda bir-rimedji kollha li tagħtiha l-liġi. Għalhekk l-appellanti għandha titqiegħad fl-i*status quo ante* sabiex tkun tista', jekk hekk jidhrilha wara li jkun ingħatalha t-tagħrif kollu li trid il-liġi, tagħmel mill-ġdid oġġezzjoni quddiem il-Bord ta' Reviżjoni, b'dan li t-terminu għall-oġġezzjoni jibda għaddej minn dakinhar li jkun ingħata t-tagħrif kollu li trid il-liġi.

22. Billi dan hu biżżejjed biex jintlaqa' l-appell u titħassar id-deċiżjoni tal-bord, ma huwiex meħtieġ li nqisu l-aggravji l-oħra tal-appellanti.

23. Il-qorti għalhekk tilqa' l-appell, tħassar id-deċiżjoni tal-Bord ta' Reviżjoni tat-3 ta' Awissu 2021 u hekk tqiegħed lill-appellanti fl-istess posizzjoni li kienet fiha qabel għalqilha t-terminu biex tressaq oġġezzjoni quddiem il-bord.

24. Naturalment, sakemm l-appellanti tinqeda, jekk ikun il-każ, bir-rimedji li tagħti l-liġi, jew sakemm ikun għadda t-terminu għall-oġġezzjoni wara li tkun ingħatat it-tagħrif minnha mitlub, l-awtorità kontraenti ma għandhiex tipproċedi bin-negozjati mal-oblaturi magħżula.

25. Billi wkoll issa l-għażla għadha miftuħa, it-tagħrif dwar il-vantaġġi relattivi tal-offerta magħżula għandu jingħata lill-oblaturi kollha li għamlu offerta ammissibbli, u mhux biss lill-appellanti.

26. L-ispejjeż ta' dan l-appell – ħlief għal dawk tad-Direttur, li tħallashom *Pharmadox* – tħallashom l-awtorità kontraenti.

Mark Chetcuti Prim Imħallef	Giannino Caruana Demajo Imħallef	Anthony Ellul Imħallef

Deputat Reġistratur
rm

Skeda A qed tiġi annessa sabiex tifforma parti integrali minn din is-sentenza.

Skeda A

1.0	Over-stickering of Medicines with packaging in English language	Printing or labelling of details required for parallel importation / authorisation in line with article 126(a) of Directive 2001/83/E
1.1a	Over-stickering of Medicines with packaging in English language, and FMD safety features	As per 1.0 above including anti-tampering device but excluding serialisation
1.1b	Over-stickering of Medicines with packaging in English language, and FMD safety features	As per 1.0 above including anti-tampering device and also serialisation
2.0	Over labelling of Medicines outer packaging in foreign language including translation services	Translation of product literature, preparation of artwork and labelling
2.1a	Over labelling of Medicines outer packaging and FMD safety features in foreign language including translation services	As per 2.0 above including anti-tampering device but excluding serialisation
2.1b	Over labelling of Medicines outer packaging and FMD safety features in foreign language including translation services	As per 2.0 above including anti-tampering device and also serialisation
3.0	Over labelling of Medicines outer and immediate packaging in foreign language including translation services	Translation of product literature, preparation of artwork and labelling
3.1a	Over labelling of Medicines outer and immediate packaging and FMD safety features in foreign language including translation services	As per 3.0 above including anti-tampering device but excluding serialisation
3.1b	Over labelling of Medicines outer and immediate packaging and FMD safety features in foreign language including translation services	As per 3.0 above including anti-tampering device and also serialisation

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